IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS WICHITA FALLS DIVISION

BILLY LANE WELCH,	§	
TDCJ No. 02133126,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 7:21-cv-004-O-BP
	§	
BOBBY LUMPKIN, Director,	§	
Texas Dep't of Criminal Justice,	§	
Correctional Institutions Division,	§	
,	§	
Respondent.	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND TRANSFERRING THIS CASE TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

This is a habeas action brought pursuant to 28 U.S.C. § 2254 in which Petitioner challenges the validity of his Hardeman County, Texas, conviction for assault with a deadly weapon. The United States Magistrate Judge entered his Findings, Conclusions, and Recommendation in which he determined that the petition is successive. *See* ECF No. 18. He recommends that the petition be transferred to the United States Court of Appeals for the Fifth Circuit. *Id.* Petitioner did not file objections.

The District Court reviewed the Findings, Conclusions, and Recommendation for plain error. Finding no error, I am of the opinion that the findings of fact, conclusions of law, and reasons for transfer set forth in the Magistrate Judge's Recommendation are correct and they are hereby adopted and incorporated by reference as the Findings of the Court.

Where a petition for writ of habeas corpus is second or successive, the petitioner must seek an order from the Fifth Circuit Court of Appeals that authorizes this Court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Because the instant petition is successive, the district court is

without jurisdiction to entertain the petition unless leave to file is granted by the Court of Appeals. *See Crone v. Cockrell*, 324 F.3d 833 (5th Cir. 2003).

It is therefore **ORDERED** that the petition for writ of habeas corpus, brought pursuant to 28 U.S.C. § 2254, is hereby **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit pursuant to *Henderson v. Haro*, 282 F.3d 862, 864 (5th Cir. 2002) and *In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997).

SO ORDERED this 3rd day of January, 2022.

Reed O'Connor

UNITED STATES DISTRICT JUDGE